

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAVID GOLDSTINE,

Plaintiff,

v.

FEDEX FREIGHT, INC., a Washington State  
entity; "DOE(S) 1-100", employees of  
FEDEX FREIGHT, INC.; and  
CORPORATION(S) XYZ 1-100,

Defendants.

Case No. 2:18-cv-01164 MJP

**DECLARATION OF ADA K. WONG IN  
SUPPORT OF PLAINTIFF'S THIRD  
MOTION TO COMPEL DISCOVERY  
RESPONSES AND FOR ATTORNEY'S  
FEES**

I, Ada K. Wong, declare,

1. I am the attorney of record for Plaintiff David Goldstine in this matter and make the following statements based on my personal knowledge.

**Plaintiff's Third Set of Interrogatories and Requests for Production to Defendant FedEx Freight, Inc.**

2. On April 2, 2018, Plaintiff Goldstine served Defendant FedEx Freight, Inc. (hereinafter "FedEx") with Plaintiff's Third Set of Interrogatories and Requests for Production to Defendant FedEx Freight, Inc. (hereinafter "Third Set of Discovery Requests"). Attached hereto as **Exhibit A** is a true and correct copy of Third Set of Discovery Requests.

3. Defendant did not respond to the Third Set of Discovery Requests. On May 8, 2019, I met and conferred with defense counsel, Donald Snook, regarding a host of outstanding discovery issues, including the Third Set of Discovery Requests. Snook sounded surprised – almost as if he did not realize he needed to respond to the Third Set of Discovery Requests and said that he will “figure it out.”

4. Defendant’s responses to the Third Set of Discovery Requests were due on May 2, 2019. To date, Defendant has not provided any responses and documents.

5. It is also noteworthy that Defendant also failed to respond to Plaintiff’s *Second* Set of Discovery Requests in a timely manner. Combined with the fact that Plaintiff had to previously file not one, but two, motions to compel discovery responses, Plaintiff now brings the underlying Motion so he can obtain the requested information and documents, especially with the discovery cutoff on July 12, 2019, and the underlying motion is a third Friday motion.

**Documents Defendant Agreed to Produce but has Not**

6. Snook has agreed to produce all responsive documents during the course of discovery, including:

- a. A chart as related to Topic No. 17 of the Notice of Videotaped Rule 30(b)(6) Deposition of Defendant FedEx (“Rule 30(b)(6) NOD”), attached hereto as **Exhibit B**;
- b. Plaintiff’s complete Washington State Employment Security Division File in Defendant’s possession, including any communications and documents referencing Plaintiff’s application for unemployment;
- c. Pre-shift documents as related to Topic No. 36 of the Rule 30(b)(6) NOD;
- d. Transfer Policy; and

1 e. Driver Disqualification Procedures.

2 7. Snook and I met and conferred regarding the above-referenced documents on  
3 April 24, 2019. See attached hereto as **Exhibit C** a copy of the letter summarizing our meet  
4 and confer conference and hereby incorporated by reference. (The initial letter I sent to Snook  
5 on April 22, 2019 outlining the issues I wanted to confer about is attached hereto as **Exhibit**  
6 **D**).

7 8. Snook promised to produce the documents on April 24th or 25th. This did not  
8 happen. We conferred again on these documents during our May 2nd and 8th meet and confer  
9 telephone conference.

10 9. On May 2, 2019, I met and conferred with Snook regarding having a third-party  
11 forensic expert gather the relevant and responsive documents. Snook stated that he needed to  
12 check with FedEx first. We also conferred regarding the documents that Ms. Tayman brought  
13 to her deposition that were directly responsive and relevant to our discovery requests and this  
14 litigation that were never produced. Snook confirmed that there were documents that were not  
15 produced because it was “part of the legal file” and will double check and confirm with me.  
16 To date, despite additional follow up on these documents (see below), he never confirmed  
17 whether there are any additional documents nor produced any additional documents.

18 10. Mediation was scheduled for May 7, 2019, and the parties attended. I  
19 previously asked Snook to meet and confer on May 7th regarding the outstanding discovery  
20 issues should the parties not be able to reach a resolution on May 7th. He agreed. However,  
21 he had left without notifying me and we did not meet and confer as expected. I also previously  
22 scheduled a meet and confer conference for May 8th at 11:00 a.m. out of an abundance of  
23 caution that the May 7th meet and confer would not occur.

1           11.     On May 7th, after the mediation concluded, I sent Snook an e-mail outlining  
2 the outstanding discovery issues for his convenience (all of which we had previously  
3 discussed). Attached hereto as **Exhibit E** is a true and correct copy of said e-mail.

4           12.     On May 8, 2019, we met and conferred yet again on the above and he was still  
5 unable to produce any documents. On May 8th, Snook stated that his assistant is out until May  
6 9<sup>th</sup> and will confirm on May 9th. To date, no documents as referenced in Paragraph 5 of this  
7 Declaration has been received.

8           13.     It is also noteworthy that Snook did not want to engage in the meet and confer  
9 conference as scheduled on May 8, 2019. Upon my insistence, we did. During the May 8th  
10 meet and confer conference, he stated he would have additional information and confirmation  
11 on May 9th. As such, we scheduled a follow up to the meet and confer conference for May  
12 9th at 1:00 p.m. PST.

13           14.     On May 9, 2019, less than 15 minutes prior to our schedule call, Snook stated  
14 that he cannot speak on the phone and will just email me. Attorney Jordan Wada responded,  
15 “What time should we expect the rest of your responses today?” Snook replied on May 10,  
16 2019: “I’ll be providing more information today”, followed with “the pre-shifts have been sent  
17 FedEx”, and that he’s working on the answers. I was copied on these e-mails. Attached hereto  
18 as **Exhibit F** is a true and correct copy of said e-mails.

19           15.     To date, we have not received any pre-shifts nor any additional responses or  
20 documents.

21     **Anticipated/Upcoming Discovery and Depositions**

22           16.     On April 17, 2019, I took the depositions of Christy Tayman in her lay witness  
23 capacity, as well as in her corporate representative capacity. During the deposition, it came to

1 our attention that she had many documents that were in her file, possession, custody, and  
2 control throughout this entire litigation process that we never received copies of. These  
3 documents included, but were not limited to, her handwritten notes and e-mail correspondence,  
4 and were directly related to the underlying facts and circumstances of this matter, as well as  
5 previously requested in the discovery we propounded.

6 17. As such, I asked Snook about why these documents were never produced and  
7 shared my concerns about what other documents may be withheld and not produced. He said  
8 he was surprised as well.

9 18. During Ms. Tayman's deposition on April 17, 2019, both Snook and Ms.  
10 Tayman asserted attorney-client privilege, including but not limited to when I asked about  
11 training provided to Ms. Tayman. Snook and Ms. Tayman both also claimed attorney-client  
12 privilege for other issues on the basis that Snook was representing Ms. Tayman in her  
13 individual capacity. The training Ms. Tayman was testifying regarding was not for legal  
14 advice, despite lawyer(s) providing all or part of that training.

15 19. I asked to take the deposition of Ms. Tayman again, but also wanted  
16 confirmation that we have all relevant documents before the taking of her continued deposition.  
17 To date, I have yet to receive a confirmation regarding whether we have all documents in our  
18 possession, which I doubt.

19 20. Snook told me that FedEx had designated corporate witnesses for every topic  
20 listed in the Rule 30(b)(6) NOD. By the end of the deposition of FedEx's last designated  
21 corporate representative on April 17, 2019, it was clear that was untrue. Prior to the April 17<sup>th</sup>  
22 deposition, I had specifically asked Snook multiple times to tell me which witness was  
23 designated for the specific topics. He only listed some of the topics for certain witnesses, then

1 globally said that either David Appesland and/or Christy Tayman will address the remaining  
2 topics. I asked him to specifically tell me which ones Mr. Appesland and Ms. Tayman will  
3 testify regarding so we do not end up in a situation where no one testified to a particular topic.  
4 Snook stated that between the two of them, all topics will be addressed (besides the affirmative  
5 defenses). This served to be untrue, and we addressed it during Ms. Tayman's 30(b)(6)  
6 deposition. After additional conferences with Snook, the topics that we were not able to  
7 resolve where no witness was designated and/or had knowledge to testify to were Topic No.  
8 42(b) regarding Plaintiff's rate of pay, and Topic No. 43(a)-(c) regarding investigations to  
9 which Plaintiff was the subject. Snook and I met and conferred again regarding this on May  
10 2nd and 8<sup>th</sup>.

11 21. I also conferred with Snook again on May 8, 2019 regarding having a third-  
12 party forensic expert gather the data and documents. Snook refused to have a third-party expert  
13 conduct this process and stated that he will have their in-house team handle this process. I  
14 expressed concern because this in-house team had been in place even before the start of this  
15 litigation, and we still did not receive all responsive documents.

16 22. Discovery cutoff is July 12, 2019. We still have a several more depositions:  
17 Tammy Rogers, her 30(b)(6) designee portion, and Craig Flick.

18 23. I waited until Thursday, May 16, 2019 to file the underlying Motion in hopes  
19 that Snook would provide us with the responsive answers, documents, and agreed-upon  
20 information. These delays are prejudicing Plaintiff and Plaintiff will still have to wait at least  
21 three Fridays before this Motion can be noted, and the additional time provided to Defendant  
22 to provide the promised and obligated responses and documents. We have provided ample  
23 time and extensions for Defendants to respond before bringing this Motion.

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct and is based upon my personal knowledge.  
3

4 **DATED** May 16, 2019, in Mountlake Terrace, WA.

5  
6 /s/ Ada K. Wong

Ada K. Wong, WSBA #45936  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**CERTIFICATE OF SERVICE**

I hereby certify that on May 16, 2019, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Medora A. Marisseau  
Karr Tuttle Campbell  
701 Fifth Avenue, Ste. 3300  
Seattle, WA 98104  
Email: [MMarisseau@karrtuttle.com](mailto:MMarisseau@karrtuttle.com)

Donald H. Snook, TN Bar #21775  
FedEx Freight, Inc.  
1715 Aaron Brenner Drive, Suite 600  
Memphis, TN 38120  
E-mail: [Donald.snook@fedex.com](mailto:Donald.snook@fedex.com)

*Counsel for Defendant FedEx Freight, Inc.*

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED: May 16, 2019, at Mountlake Terrace, Washington.

/s/ Ada K. Wong  
Ada K. Wong